

JAN 13 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHOHIMJON SHUKUROV,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-75000

Agency No. A77-755-387

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 9, 2006**

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Shohimjon Shukurov, a native and citizen of Uzbekistan, petitions for
review of the Board of Immigration Appeals' ("BIA") decision summarily

* This disposition is not appropriate for publication and may not be cited to or
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral
argument. See Fed. R. App. P. 34(a)(2).

affirming an immigration judge's ("IJ") order denying Shukurov's motion to reopen his removal proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Singh v. INS*, 213 F.3d 1050, 1052 (9th Cir. 2000). We grant the petition for review and remand for further proceedings.

Shukurov's motion to reopen included a declaration stating that he failed to appear at his hearing because his counsel's secretary told him the wrong time of the hearing. The IJ concluded that a mistake as to the time of the hearing does not rise to the level of exceptional circumstance. Because providing the wrong time of a hearing can constitute ineffective assistance of counsel, and ineffective assistance of counsel constitutes an "exceptional circumstance," we grant the petition and remand to the BIA to remand to the IJ for further proceedings. *See* 8 U.S.C. § 1229a(e)(1); *Lo v. Ashcroft*, 341 F.3d 934, 938-39 (9th Cir. 2003) (holding that where counsel's secretary misinformed petitioners of the date of their cancellation of removal hearing, causing them to miss their hearing, ineffective assistance of counsel rose to the level of exceptional circumstances).

PETITION FOR REVIEW GRANTED; REMANDED.